

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC., *et al.*,

Defendants.

Civil Action No.  
3:21-CV-00501-RJC-WCM

**JURY TRIAL DEMANDED**

**ANSWER AND DEFENSES TO COUNTERCLAIM**

Plaintiff FS Medical Supplies, LLC (“FSMS”), by and through its attorneys, hereby responds to the Counterclaim, dated October 16, 2023, filed by Defendants Tanner Pharma UK Limited (“TPUK”) and TannerGAP, Inc (“TannerGAP”) (collectively, the “Defendants”).

**PARTIES, JURISDICTION, AND VENUE**

1. Admitted.
2. FSMS admits on information and belief that Tanner Pharma UK Limited is a limited company organized under the laws of England and Wales and otherwise denies the allegations of Paragraph 2.
3. Admitted.
4. The allegations in Paragraph 4 call for a legal conclusion, and as a result, no response is required. To the extent a response is required, FSMS admits that this Court has jurisdiction over this case.

**FACTUAL BACKGROUND**

**A. The Distribution Agreement**

5. Admitted.

6. FSMS respectfully refers the Court to the Distribution Agreement and denies any allegation inconsistent therewith.

**B. The California Litigation**

7. Admitted.

8. Admitted.

**COUNT I – ATTORNEYS’ FEES**

9. FSMS lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9 regarding the attorneys’ fees and costs that TannerGAP and TPUK allegedly incurred and, on that basis, denies the allegations. FSMS denies the remaining allegations of Paragraph 9.

10. FSMS lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 regarding the attorneys’ fees and costs that TannerGAP and TPUK allegedly incurred and continue to incur and, on that basis, denies the allegations. FSMS denies the remaining allegations of Paragraph 10.

The remainder of the Counterclaim consists of a prayer for relief, as to which no response is required. To the extent a response is required, FSMS denies any remaining allegations in the Counterclaim and denies that Defendants are entitled to any relief against FSMS. FSMS denies any allegations not expressly admitted above.

**DEFENSES**

The following Defenses are raised by FSMS without assuming the burden of proof as to matters as to which FSMS would not otherwise have the burden of proof. FSMS specifically reserves the right to raise any defenses available to it at any time during the pendency of these proceedings, including any and all defenses which may come to light during discovery or otherwise.

### **First Defense (Failure to State a Claim)**

1. The Counterclaim, dated October 16, 2023, fails to state a claim upon which relief may be granted.

### **Second Defense (Unclean Hands)**

2. Defendants are precluded in whole or in part from obtaining relief based on the doctrine of unclean hands.

### **Third Defense (Failure to Mitigate)**

3. Defendants have failed to mitigate damages alleged in their Counterclaim.

### **Fourth Defense (Waiver)**

4. Defendants, by their conduct, have waived their claims as against FSMS and are therefore barred from recovering in whole or in part.

### **Fifth Defense (Ripeness)**

5. The claim alleged in Defendants' Counterclaim is not yet ripe.

### **Sixth Defense (Latches)**

6. Defendants are precluded in whole or in part from obtaining relief based on the doctrine of latches.

WHEREFORE, the Court should deny all relief sought in the Counterclaims and grant FSMS its reasonable costs and fees, including attorneys' fees, and such other and further relief as the Court deems just and proper.

### **JURY DEMAND**

FSMS demands a trial by jury on all issues so triable.

This the 31st day of October, 2023.

/s/ Kent A. Yalowitz

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